

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARLON MULLINGS : CIVIL ACTION
v. :
DAVID DIGUGLIELMO, et al. : NO. 08-617

ORDER

AND NOW, this 9th day of April, 2008, upon careful and independent consideration of Marlon Mullings's pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (docket entry #1), the petitioner's motion to stay his petition (docket entry #3), the Report and Recommendation of the Honorable Henry S. Perkin (docket entry #4), and Mullings's objections (docket entry #6), and the Court finding that Judge Perkin correctly resolved the issues with Mullings' petition, i.e., the statute of limitations for filing a federal habeas petition is tolled until the state courts resolve his pending Pennsylvania Post-Conviction Relief Act claim, and, therefore, he cannot file and we need not stay the present petition, it is hereby ORDERED that:

1. The Report and Recommendation is APPROVED and ADOPTED;
2. The petition for writ of habeas corpus is DENIED WITHOUT PREJUDICE;
3. Petitioner's motion to stay timely filed habeas petition is DENIED; and
4. Petitioner having made no substantial showing of a denial of a constitutional right, we DECLINE to issue a certificate of appealability; and

5. The Clerk shall CLOSE this civil action statistically.

BY THE COURT:

/s/ Stewart Dalzell, J.